

Special Education Report

For Parents of Students With Disabilities

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For a Free Appropriate Public Education for All Children

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Proving Substantial Regression To Obtain Summer Special Education Services

The Individuals with Disabilities Education Act (IDEA) provides for year round special education programs and services when necessary to provide a student with a Free Appropriate Public Education (FAPE). In New York State eligibility for such services often hinges on whether a student would substantially regress unless they received such programs or services. For parents of such students it is often a challenge to convince their school district's Committee on Special Education (CSE) to provide them with year round services otherwise known as a twelve (12) month IEP.

Often parents come to their child's initial or subsequent meetings of the CSE expecting the educational professionals on the Committee to make appropriate recommendations including the provision of a twelve (12) month IEP. Just as often these parents are unaware that their child might be eligible for summer services and are unaware that the CSE has failed to recommend those services. In some circumstances the CSE tries to derail a parent's request for summer services by offering their child summer programs provided by the school district for all students. Parents sometimes feel compelled to accept these services in order to ensure that their children receive some help when their school district CSE has not recommended appropriate summer services.

In order to ensure that your child receives appropriate services during the summer you need to understand what summer special education services are available from your school district and whether those services are appropriate to meet your child's special education needs. Parents also need to be

Deadline for Requesting Bus transportation for Students Attending Private School in September of 2008 is April 1st

Parents who plan to have their children attend private school this fall must notify their public school district that they want their public school district to provide transportation by April 1st of this year or risk being denied that transportation.

Students attending private schools within 15 miles of their public school district of residence are eligible for bus transportation if their parents requested it on or before April 1st of the school year before the services are requested. This deadline is critical as a public school district will often deny a parent's request received after the April 1st deadline.

In addition to the 15 mile limitation and the April 1st deadline parents must also be aware that their public school district may not provide transportation during periods when the public schools are closed even if the private school their children are attending is open. In addition the public school may also not provide transportation to after school activities at the private school even when such transportation is provided to public school students attending their local public schools.

Parents of students with disabilities whose children are attending a private school and which private school is providing an educational program substantially similar to that recommended by the public school district's CSE are eligible to receive bus transportation up to fifty (50) miles from their public school district of residence. These parents are entitled to this transportation all year without regard to the April 1st deadline. However, whenever possible, parents should make every effort to request transportation prior to the April 1st deadline.

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The Special Education Report is published by the Law Office of John J. McGrath, Esq. who is solely responsible for its content. Readers should not rely upon the report for legal advice and should consult with an attorney for their individual legal needs.

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Substantial Regression and Obtaining Appropriate Special Education Summer Programs

aware that their children may be entitled to those services even if their public school district is incapable of providing those services. In that event the public school district may be required to pay for services provided by private parties or other public school districts having the appropriate programs or services necessary to provide your child with a FAPE.

Proving substantial regression cannot be left to the last minute just before an annual review meeting in late April, May or June. Parents must be aware of the definition of substantial regression under New York State Education Law. New York State defines substantial regression as a student requiring more than eight (8) or more weeks of review in order for that student to catch up to where they were the previous June when school ended. Proving that a student will substantially regress over the summer requires careful year long planning by parents of disabled children.

Often parents and teachers notice that the student loses information taught to her when they are absent from school during weekends, holidays, vacations and absences due to illness. When parents become aware of this they should immediately bring it to the attention of their child's teacher and ask if s/he notices it as well. If the teacher agrees a parent should discuss what measures the parent and teacher should be taking, above and beyond standard homework, in order to catch the student up and to further reinforce the previously taught, and forgotten, materials.

Whatever the outcome of that discussion with your child's teacher you should memorialize the conversation in a letter to that teacher. This letter will document that you had the conversation with the teacher, that you and the teacher either agreed or disagreed that regression was observed during the absence under discussion and that a course of action was undertaken (or not) to attempt to address the regression. These types of meetings and follow up letters should be repeated during several weekends (especially three (3) day holiday weekends) and vacations or long illnesses. If the teacher sends you a response email or letter make sure to preserve it for your annual review meeting as evidence that there was a discussion and possible agreement that your child was

regressing during those periods. In this way the CSE will have a harder time denying that regression occurred and will be forced to address that regression at your annual review CSE meeting. Having that documentation will also be useful in proving to an impartial hearing officer that your child's teacher agreed that there was regression making it possible to win such services at a special education impartial hearing.

Equally important is having examples of your child's tests and class work in order to demonstrate regression. Poor grades on Monday morning spelling or Math tests are prime examples of the types of school work that may demonstrate to the CSE or a hearing officer that your child will suffer substantial regression if summer services are not provided.

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April 1st Transportation Deadline

School district's will often deny transportation requests received after April 1st. However, parents should be aware that such requests will be found timely made if postmarked on or before April 1st no matter when the school district actually receives the request. If parents are sending the request by mail they should do so using a method verifying the date of mailing and delivery. The Postal Service offers priority mail delivery confirmation services requiring no signature from the school district. This is an excellent way of verifying the date of mailing and of delivery.

Another exception to the April 1st deadline is when you move into the school district after April 1st. In that event you have 30 days after moving into your new home to make your request for transportation.

In the event your school district denies your request parents may appeal those denials of transportation to the New York State Commissioner of Education. Appeals to the Commissioner must be made within 30 days of the date of the decision, not the date you receive the decision. The Commissioner will deny any appeal that is not filed within 30 days unless good cause is shown for the delay.

Parents of disabled students may also file a request for a special education impartial hearing if they believe their disabled child's educational program at the private school is substantially similar to the special education program and services recommended by their residential school district's CSE. There is a two year statute of limitations for filing such appeals but parents wishing to obtain transportation immediately should file those appeals immediately.

Careful Planning is Important for Obtaining a Successful Outcome At Your Annual CSE Meeting

Parents of disabled children receiving special education programs and services from their public school district need to carefully plan their strategy for each year for their child's annual review meeting with the CSE. An important first step is to gather the appropriate records documenting your child's progress since the last annual review meeting. Those records include report cards, correspondence, evaluations, examples of your child's actual work at school and at home. These documents will need to be reviewed prior to the annual review meeting to determine whether s/he is making progress in the program previously recommended by the CSE at its last meeting. Careful selection of representative samples of a student's class and home work will go a long way in showing the CSE whether your child is making progress under the previously agreed upon IEP.

Don't Go to CSE Meetings Alone

This is a mistake parents, especially those new to the special education process, often make. You are already emotionally distraught after finding out that your child has a disability that may affect their academic performance at school. If you've done your homework you'll need to focus all your attention on what is being said so that you can properly respond. It is always useful to have someone else with you at the meeting for moral support and to take notes for you. That person may also be used as a witness at an Impartial Hearing in the event there is a dispute as to what was said at the meeting. In the event you must go alone bring a tape recorder to tape the meeting.

Taping Meetings of the Committee on Special Education

The IDEA authorizes parents to tape meetings of the CSE. Although it is unclear whether a parent needs to provide advanced notice of their intent to tape it is best to provide such notice in order to avoid the school district canceling the meeting because they were unable to obtain equipment in order to tape the meeting as well. I recommend that parents provide at least five (5) days notice to ensure the meeting proceeds without undue delay. This also ensures that if the school district members of the CSE refuse to hold the meeting because you are taping

that you have good cause to file an impartial hearing request to enforce your right to tape.

Bringing Experts to Your Child's CSE Meeting

Parents also need to carefully consider whether they need to bring an expert with them to the CSE meeting. An expert working for a parent will not only discuss their own opinion/diagnosis and recommendations for your child's new IEP but will also be able to respond to statements made by school personnel at the meeting as well. Having your own expert at the meeting could mean the difference between a successful or frustrating experience at your child's annual review meeting.

Attorneys and Advocates at Meetings of the Committee on Special Education

Great care should be exercised in making any decision to bring an attorney or advocate to any meeting of the CSE. Certainly at the beginning of your relationship with the school's CSE bringing an advocate or an attorney will almost always turn the relationship adversarial. Unless you are sure the CSE is not going to provide your child with an appropriate special education program it may be best to forgo formal representation at the meeting. In the first place it is expensive. Some advocates charge more money than attorneys. Secondly you cannot recover your fees for advocates at any time or for your attorneys if you need to file an impartial hearing request after your meeting. Seeking their advice is always appropriate prior to your meeting. Bringing an advocate or attorney to your meeting should only be done because you know in advance that the CSE will not give your child what s/he needs and only as a last ditch attempt to get the CSE to do the right thing. Save that money for the litigation you'll need to commence if the CSE turns down your request for the Free Appropriate Public Education your child deserves.

Deciding When to Sue Your School District for Violations of the IDEA

As with any type of litigation deciding whether to sue your school district over their denial of special education programs or services to your child should be carefully considered. Even when parents plan to sue pro se (latin for on your own) they should seek the advice of an attorney specializing in special education litigation before during and after the hearing. Even periodic consultations with an attorney practicing in this

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When to Sue Your School District

complicated legal area will greatly increase the likelihood of a successful outcome.

Reasons to Use A Lawyer

If you decide to sue your school district over their decision to deny your child special education programs and/or services your school district will be represented by an attorney knowledgeable in special education law. Although parents are legally entitled to represent themselves and their children in all aspects of special education litigation they are at an extreme disadvantage when doing so on their own. In the first place you are probably not an expert in any kind of legal proceeding. Second, you are representing your own child. Third you are defending your own decision in terms of the disputed educational program or service you had requested and the CSE turned down. It stands to reason that your perspective will be skewed as you are too emotionally invested in the outcome. Asking a third, neutral party to evaluate your case to see if it has merit is absolutely essential in deciding whether to sue. It is equally essential to level the playing field that is otherwise stacked against you.

In addition to your lack of legal training and expertise Parents often go into a meeting of their CSE or into an impartial hearing without any idea of what they want if they win. It is absolutely essential to consult with someone concerning what you should be asking for in the event your suit is successful, ie: private school tuition reimbursement, Wilson or Lindamood Bell reading program, at home ABA, etc...

Consulting with an attorney has very practical advantages prior to initiating litigation. First, you get an unbiased opinion as to the merits of your case. If a lawyer gives you the thumbs up to proceed you need not worry that your school district may counter sue you for attorneys fees. Even if they do your consultation with an attorney acts like an insurance policy against a claim that you brought forth a frivolous case.

Second, after the attorney has given you the thumbs up s/he may take the case at little or no cost to you. Moreover, even if a private attorney will not do that your school district is required by law to give you the names of low or no cost legal services for you to consult. Once you know you have a good case it may be easier to get a low cost attorney or firm to represent you. If

the case is successful they'll get paid when it's over.

Third, most school districts don't like paying their own lawyers, especially now that the school lawyer scandal has erupted on the front pages of the newspaper and television. If you successfully sue your school district your local school board will not be happy about paying your attorneys fees as well as their own. This, in fact, creates a powerful incentive for school districts to settle your case before it goes too far. If your goal is to resolve the matter quickly the best route to that goal is with an attorney representing the interests of you and your child.

Choosing an Independent Evaluator

When looking for an independent evaluator it is important to ask them whether they also perform work for school districts. This may not automatically disqualify them from evaluating your child depending on their answers to some follow up questions. Anyone you choose to evaluate your child should be prepared to participate in meetings of your CSE as well as possibly testifying at an impartial hearing if there is a dispute. Any expert who is unwilling to attend a CSE meeting or impartial hearing should be immediately stricken from your list. Experts also working for school districts should be doubly scrutinized as they have a potential conflict of interest, especially if they also work for your school district. If they work for your district or your local BOCES you should not use them.

Parent Members of the CSE Do Not Represent you or Your Child

Many parents mistakenly believe that the parent member of the CSE is there to represent their interest. This is not the case. School districts are required to make them available but parents are free to notify their school district that they do not want a parent member to attend.

Parent members are usually parents of disabled children and their purpose at the meeting is to offer parents of disabled children with information about the school district special education processes. However, the skill sets of these parent members is variable and their presence at a CSE meeting can even become adversarial. Parents often become incensed when the CSE's parent member sides with the school district members of the Committee. If you are concerned that this might happen to you it is best to notify the CSE in advance that you do not want a parent member at your CSE meeting.

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